BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the matter of	)	
	)	
Application by Verizon New England	)	
Inc., Bell Atlantic Communications,	)	
Inc., (d/b/a Verizon Long Distance),	)	CC Docket No. 00-176
NYNEX Long Distance Company,	)	
(d/b/a/ Verizon Enterprise Solutions),	)	
and Verizon Global Networks Inc. for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in Massachusetts	)	

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.
ON VERIZON NEW ENGLAND'S SECTION 271 APPLICATION

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TABLE OF CONTENTS

PAGE

I. INTRODUCTION AND SUMMARY 1

II. BECAUSE CLECS CANNOT OBTAIN NUMBERING RESOURCES IN MASSACHUSETTS AT THIS TIME, VERIZON'S APPLICATION IS INCONSISTENT WITH THE PUBLIC INTEREST 5

A. The Massachusetts Numbering Crisis 6

B. CLECs Are Precluded From Offering Services Requiring New Numbers In Many Rate Centers In Massachusetts. 11

C. The Absence Of Numbers Compels A Finding That Verizon's Entry Is Contrary To The Public Interest Until The Problem Is Resolved. 15

III. VERIZON'S OWN CONDUCT COMPELS A FINDING THAT IT HAS NOT MET THE CHECKLIST AND THAT THE LOCAL MARKETS ARE NOT IRREVERSIBLY OPEN TO COMPETITIVE ENTRY. 18

A. Verizon Has Taken Facially Unreasonable Positions In The Negotiations Process. 20

B. Verizon's Arbitration Positions Make Plain That In The Future It Will Alter At Least Some Of The Conditions That Have Made Some Entry Possible In Massachusetts. 26

CONCLUSION 30

ATTACHMENT 1: Chart of Twenty Largest Municipalities in Massachusetts

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Sprint Communications Company L.P. ("Sprint") hereby files its comments regarding the above-captioned application of Verizon New England for authorization to provide in-region, interLATA services in Massachusetts ("Application").[1] Verizon's Application does not meet the requisite standards of Section 271 and cannot be granted at this time.

I. INTRODUCTION AND SUMMARY

Verizon has offered in its Application the following syllogism:

> The FCC granted 271 approval for New York ;
>
> Verizon's performance in Massachusetts is the same as its performance in New York;
>
> *Therefore,* Verizon's Massachusetts Application must be granted.

Only the primary predicate of this attempted logic is correct. First, the argument incorrectly assumes that the applications are subject to identical legal standards. This is surely not so. The

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[1] Application by Verizon New England for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Dkt. No. 00-176 (filed Sept. 22, 2000).

Massachusetts Application and the New York application are subject to different standards in material respects because the law has changed over the relevant time period. In the FCC's proceeding to review the New York application,[2] the FCC excused Verizon from showing compliance with the new UNE rules promulgated by the *UNE Remand Order*[3]and the line sharing requirements established in the *Line Sharing Order*,[4] given the then-current state of legal proceedings. *New York Order* ¶ 31 & n.70. Similarly, it excused Verizon from demonstrating non-discriminatory provisioning of xDSL-capable loops because of "unique circumstances" that the Commission expected would "evolve over time or will otherwise not be present in future applications."[5] But there can be no question now that Verizon must demonstrate full compliance with the FCC's *UNE Remand Order* and the FCC's *Line Sharing Order*. It cannot do so. Since the filing of this Application, the Massachusetts Department of Telecommunications and Energy ("DTE") has ruled upon and rejected numerous aspects of Verizon's proposed tariff filing

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2 *Applications by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶¶ 422-423 (1999) ("*New York Order*").

3 *Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*").

4 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

5 The Commission continued,

> Rather, we will find it most persuasive if future applicants under section 271, unlike this applicant, make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops, either through proof of a fully operational separate advanced services affiliate . . . which may also include appropriate performance measures, or through a showing of nondiscrimination . . ." *New York Order* ¶ 330.

governing xDSL and line sharing offerings because they violated FCC requirements.[6] Verizon's Application therefore cannot demonstrate compliance with governing law and the checklist.

Second, the record on competitive entry opportunities in Massachusetts is demonstrably inferior to those in New York. While the Massachusetts DTE has worked diligently to open local markets, substantial obstacles remain. As discussed in detail in Section II, there is currently a fundamental barrier to entry and expansion in Massachusetts whose removal is so essential to competition that its continued existence alone dictates that a grant of the Application is contrary to the public interest: number exhaustion. As the Commission itself has recognized, "access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network."[7] The absence of this "crucial" input currently poses a substantial barrier to entry and expansion for CLECs in Massachusetts and thus precludes a grant of the Application at this time. Moreover, as discussed in Section III, Verizon itself has imposed conditions in Massachusetts that make entry more difficult than it is in New York. Verizon has recoiled from its legal obligations established in New York and has affirmatively resisted their application in Massachusetts. It has

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6 *Investigation by the Department on its Motion as to the Propriety of Rates and Charges Set Forth in MDTE No. 17, filed with the Department by Verizon on May 5 and June 14, to Become Effective October 2, 2000*, DTE Dkt. No. 98-57, Phase III, Order (rel. Sept. 29, 2000). The Order, issued one week after Verizon filed the instant Application, requires Verizon to refile to correct the illegal tariff provisions within four weeks of the date of the Order. Plainly Verizon's Application does not and cannot show compliance with the checklist as of the date it was filed.

7 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 261 (1996) ("*Second Report*").

simultaneously sought to impose additional costs on rival CLECs that have no precedent in New York.

More generally, Verizon's performance in New York was demonstrably different from its performance in Massachusetts. The record before the DTE is replete with provisioning and other operational problems submitted from a wide range of CLECs, making clear Verizon has not met the full competitive checklist.[8] Moreover, Verizon has not given the DTE sufficient time to establish the necessary, comprehensive performance measurements that, with confidence and credibility, can accurately measure Verizon's performance.[9] This is essential both for purposes of assessing Verizon's conduct to date as well as for assuring its future performance. Sprint leaves it to others to describe and document their market experiences with Verizon; Sprint submits its own unhappy experience to complete the FCC's record.

Given these circumstances, the Commission's grant of interLATA authority in New York in fact counsels against giving such authority here. Indeed, the post-grant debacle in New York underscores the need to establish the conditions for lawful, commercially viable provisioning prior to approval. *See Bell Atlantic-New York Authorization Under Section 271*, 15 FCC Rcd 5413 (2000) (Consent Decree).

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8 *See generally Inquiry by the Department Pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Bell Atlantic-Massachusetts*, DTE Dkt. No. 99-271, Transcript of Technical Session, Vol. 28 at 5411-5645 (Sept. 8, 2000) ("DTE Transcript") (transcript of oral argument).

9 Limited data reconciliation efforts (studying only 36 transactions) were undertaken on September 6 and September 20, 2000. Even this limited reconciliation demonstrated severe problems with Verizon's data scoring. *See* Comments of AT&T Communications of New England, Inc. Regarding Partial Data Reconciliation, *Inquiry by the Department Pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Bell Atlantic-Massachusetts,* DTE Dkt. No. 99-271 (filed Sept. 28, 2000) (explaining *inter alia* that one-third of hot cuts were admittedly misscored by Verizon and another 30% were disputed).

II. BECAUSE CLECS CANNOT OBTAIN NUMBERING RESOURCES IN MASSACHUSETTS AT THIS TIME, VERIZON'S APPLICATION IS INCONSISTENT WITH THE PUBLIC INTEREST.

As the Commission is well aware, the demand for telephone number resources has skyrocketed since passage of the Act. From 1984 to 1994, only nine new area codes were introduced in the U.S.; in contrast, in the last four years, *eighty-nine* new area codes were introduced -- a ten-fold increase in less than half the time.[10] This exponential growth in demand for numbers is a function of two distinct factors: (1) growth in the kinds of services and the number of suppliers offering them, and (2) the high number of rate centers in most states, requiring CLECs to obtain telephone numbers in each rate center in order to economically interconnect with ILECs.

In Massachusetts, the problem is worse than in most states; it is presently suffering from a well-documented numbering crisis. As explained below, the DTE has worked diligently to solve these problems on a transitional basis. However, the solutions adopted by the DTE have proven short-lived at best, requiring repeated and continuing efforts to patch up what is fundamentally a suboptimal, inefficient utilization plan. Even over the short term, the interim solutions deemed necessary by the DTE most recently have yet to take effect, leaving competitive entrants with limited or no ability at this time to obtain numbers in the most densely populated parts of the state. For the longer term, no plan currently exists to implement rate center consolidation in Massachusetts. But without rate center consolidation, it remains clear that number exhaustion will continue to be a game of "catch-up," impeding and delaying CLEC entry and expansion in the Massachusetts local markets. Because Verizon does not share in this

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[10] *Numbering Resource Optimization*, 15 FCC Rcd 7574, ¶ 6 & n.8 (2000) ("*Numbering Order*").

problem, and in fact has a plentiful supply of telephone numbers, the shortage of telephone numbers constitutes a substantial barrier to entry and expansion that must be removed and resolved before 271 authority can lawfully be granted.

A. The Massachusetts Numbering Crisis

Four area codes in eastern Massachusetts comprise roughly two-thirds of the total geographic area of the state,[11] and contain eighteen of the twenty largest municipalities.[12] Like other states, eastern Massachusetts is organized into geographic locations known as "rate centers," and every telephone number is assigned to a particular rate center.[13] Today, there are 202 rate centers in eastern Massachusetts. *DTE Area Code Order* at 19 n.13. "Under the current system, carriers must obtain at least one full exchange code (*i.e.*, 10,000 numbers) in every rate center in each geographic area they wish to serve. *If a carrier wished to serve customers throughout Eastern Massachusetts, the carrier would need to request over two million telephone numbers . . .*" *Id.* (emphasis added). Without access to numbers in a relatively contiguous area

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11 *See* Massachusetts' Area Code Regions <http://www.magnet.state.ma.us/sec/cis/cispdf/areacdmp.pdf>.

12 *See* Municipality Chart, appended as Attachment 1 and summarizing data from Massachusetts Department of Revenue, Division of Local Services, Municipal Data Bank, file name 7098.xls (U.S. census data, estimated as of July 2, 1998) <http://www.state.ma.us/dls/mdmstuf/Pop7098.xls> and from Verizon Area Codes for eastern Massachusetts <http://www.bellatlantic.com/areacode/pages/508.htm>; <http://www.bellatlantic.com/areacode/pages/617.htm>; <http://www.bellatlantic.com/areacode/pages/781.htm>; <http://www.bellatlantic.com/areacode/pages/978.htm>.

13 *Petition of Lockheed Martin IMS, the NANPA, for Area Code Relief for the 508, 617, 781 and 978 Area Codes in Eastern Massachusetts*, DTE Dkt. No. 99-11, Order at 19 n.13 (2000) ("*DTE Area Code Order*") <http://www.state.ma.us/dpu/telecom/99-99/areacodeorder.htm>. Often, the distance between rate centers is used to determine the price for certain telecommunications services, including charges for local calls. *Id.*

of rate centers, CLECs cannot efficiently establish a footprint and are thus effectively precluded from competing against Verizon for services requiring new numbers in that geographic area.

The state's numbering problems are hardly new, and the DTE has undertaken several efforts to remedy them over the last several years.[14] First, in January 1997, the DTE ordered a geographic split of the 617 and 508 area codes to create two new area codes, 781 and 978.[15] In March 1998, less than two months before that split was fully implemented, DTE was notified that the 508 and 617 area codes were in jeopardy of exhaustion.[16] *DTE Area Code Order* at 18. By May 1998, the DTE was further advised that the 781 and 978 codes were also in jeopardy. *Id.* The industry immediately instituted rationing, with NeuStar (the current NANPA) assigning "exchange codes on a lottery basis at the rate of six codes per month for the 508 and 617 area codes, eight codes per month for the 781 area code, and ten codes per month for the 978 area code." *Id.* at 19.[17]

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[14] As noted, while DTE has examined rate center consolidation, which would consolidate the existing 202 centers into 25, it has thus far declined to implement any changes. *DTE Area Code Order* at 19.

[15] *Id.* at 18. A geographic split refers to when the "geographic area covered by an existing code is split in two (or three). One of the sections retains the existing area code, while others receive new area codes." FCC Area Codes: Frequently Asked Questions at 5 <http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/areacode.html>. In comparison, an area code overlay occurs when "the new area code 'overlays' the pre-existing area code, most often serving the identical geographic area." *Id.*

[16] " 'Jeopardy' is a term of art in the telecommunications industry used to indicate when the available supply of exchange codes runs low. A 'jeopardy' condition is declared when it is projected that exchange codes will be depleted or exhausted within approximately two years. An NPA declaration of 'jeopardy' signals the need for area code relief." *DTE Area Code Order* at 18 n.10.

[17] Absent industry consensus, the Commission has granted states authority to implement rationing only in conjunction with area code relief plans. *See* Massachusetts DTE Petition for Delegation of Additional Authority to Implement Number Conservation

In February 1999, the DTE sought authority from the Commission[18] to implement additional area code conservation measures, including, *inter alia*, the power to reclaim unused and reserved codes, to revise and maintain certain rationing measures, and to institute thousands-block number pooling. DTE Petition at 17-20. The Commission, in large part, granted the DTE's petition for additional authority in September 1999. *Id.* at 20. As a result, the DTE instituted number conservation measures aimed at prolonging the utility of existing Massachusetts area codes. *Id.* at 20-21.

Despite these efforts, by April 2000, the DTE found it necessary to order the implementation of four new overlay area codes in eastern Massachusetts by April 2001. *See id.* at 1. This decision was based upon then "[c]urrent data . . . show[ing] that neither the 508 nor the 617 area code has a sufficient inventory of unassigned exchange codes available to meet the forecast demands of wireless carriers through the end of 2002." *DTE Area Code Order* at 21-22.[19] The DTE determined that even with the institution of thousands-block number pooling, wireline carriers' reported demand alone would immediately outstrip the forecasted supply of thousands-blocks in the 508 and 617 area codes, and would likely outstrip supply in the 781 and

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Measures in Massachusetts at 12, *Numbering Resource Optimization*, CC Dkt. No. 99-200 (filed Aug. 2, 2000) ("DTE Petition").

[18] Congress granted the Commission exclusive jurisdiction over numbering issues in Section 251(e)(1) of the Act. 47 U.S.C. § 251(e)(1).

[19] The 508 area code was in complete exhaust as of March 24, 2000. *See* Initial Comments by AT&T Communications of New England, Inc. at 2, *Petition of NeuStar, Inc., as the North American Numbering Plan Administrator and on Behalf of the Massachusetts Telecommunications Industry, for Area Code Relief for the 413 Area Codes in Western Massachusetts*, DTE Dkt. No. 00-64 (filed Oct. 5, 2000) <http://www.magnet.state.ma.us/dpu/telecom/00-64/initial_com.htm>. NeuStar has since announced that the 617 area code was in exhaust as of August 25, 2000. *Id.*

978 NPAs within a short period of time.[20] *See id.* at 22. As a result, the DTE declined to order number pooling for the existing NPAs, concluding that, without new NPAs, number pooling "would ultimately be unsuccessful in providing adequate numbering resources for both wireless and wireline carriers in Eastern Massachusetts." *Id.* at 21. Instead, the DTE determined that the only acceptable alternative was to implement four new area code overlays. *Id.* at 24.

The current numbering crisis will thus continue unabated until new numbers are activated in these new area codes, which will not begin to occur until *at the earliest* May 2001 -- some five months after the Commission will have acted on Verizon's Application.[21] Nor are CLECs guaranteed to receive sufficient numbering resources at that time. First, the DTE has the ability "to order a continuation of [its current] rationing in the existing and new overlay codes in eastern Massachusetts for six months following the implementation of the new overlay codes in eastern

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[20] While the supply in 781 and 978 would initially be sufficient, it would take six months to institute thousands-block pooling. *DTE Area Code Order* at 23. During the implementation delay, full exchange codes would continue to be assigned, contributing to faster exhaust. *Id.* Moreover, the Commission has directed that any state number pooling trials be instituted on an MSA-by-MSA basis. *Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes,* 14 FCC Rcd 17447, ¶ 20 (1999) ("*Massachusetts Delegation Order*"). While the greater Boston MSA encompasses the 617 and 781 area codes in their entirety, it does not cover all rate centers in the 508 and 978 NPAs. *See DTE Area Code Order* at 20.

[21] Although area code relief will be implemented on April 2, 2001, "new numbers will not be active in the LERG until May 2, 2001." MediaOne Response to Bell Atlantic's Supplemental Comments at 14, *Inquiry by the Department Pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Bell Atlantic-Massachusetts*, DTE Dkt. No. 99-271 (filed July 18, 2000) ("MediaOne Comments").

In addition to the problems in eastern Massachusetts, it is also noteworthy that the DTE was further advised by NeuStar in May 2000 that the 413 area code in western Massachusetts was "perilously close to jeopardy status." DTE Petition at 6. In August 2000, the DTE petitioned the Commission for additional authority to implement number conservation measures in the four new overlay area codes in eastern Massachusetts as well as in the 413 area code. *Id.* at 9.

Massachusetts in April 2001." DTE Petition at 20-21 n.17. Second, the DTE currently lacks the authority to order number pooling for the four new overlay area codes. *DTE Area Code Order* at 24 n.26. Moreover, while the Commission has ordered mandatory number pooling within nine months of the selection of a national number Pooling Administrator, no administrator has yet been chosen. *Numbering Order* ¶¶ 128, 156.[22] Given the inefficiency that would result in issuing large numbers of NXXs prior to number pooling, it is conceivable that DTE would continue such rationing until pooling procedures are instituted. Under such a scenario, relief might not occur for the majority of CLECs until August or later.[23] Regardless of whether rationing continues, even after these new codes are created, it may take several months for many CLECs to obtain a sufficient footprint to compete with Verizon on an economic basis.[24] Most

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22 Once an administrator is chosen, the Commission has concluded that a staggered rollout schedule of three NPAs per NPAC region per quarter is necessary to ensure a smooth implementation of number pooling. *Numbering Order* ¶ 159. An initial NPA rollout schedule has not yet been established. *Id.* ¶ 160.

23 In the meantime, because of their ability to "warehouse" NXXs, incumbent LECs like Verizon have an advantage over CLECs during the time that these new codes are being introduced. *Second Report* ¶ 289. They "also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers." *Id.* While CLECs may well be forced to jockey for new numbers once the eastern Massachusetts area codes are implemented, Verizon will no doubt be able to meet new customer requests from its existing stockpile.

24 Assuming a continuation of the existing rationing procedures and given that the 508 and 617 NPAs are currently exhausted, the new codes will make available at most 48 NXXs per month (*i.e.*, zero NXX codes in 508 and 617 due to exhaust; six NXX codes each in the 508 and 617 overlay area codes; eight NXX codes each in 781 and its overlay area code; and 10 NXX codes in 978 and its overlay area code, for a total of 48). Prior to thousands-block number pooling (implementation of which will take at least six months and not cover the entire eastern area, *see supra* n.20), that number of NXXs will be insufficient to allow CLECs to comprehensively cover all or even many of the 202 rate centers in eastern Massachusetts. At the rate of 48 NXXs per month, the monthly allocation would not allow one CLEC to cover one-quarter of the rate centers.

significantly, all of these measures can only succeed for some transitional period; until the number of rate centers is reduced, inefficient allocation of telephone numbers will continue.

B. CLECs Are Precluded From Offering Services Requiring New Numbers In Many Rate Centers In Massachusetts.

While the DTE is attempting to resolve the severe numbering shortage, CLECs are unable to obtain numbers in a sufficiently timely fashion to allow them to offer service to consumers. For example, Sprint has determined that it must obtain numbers in a substantial portion of the rate centers in eastern Massachusetts in order to establish a sufficient footprint to roll out service efficiently. To date, under the current rationing system, Sprint has received numbers in fewer than three percent of the desired rate centers. But for this lack of numbers, Sprint ION would have been brought to market in eastern Massachusetts by the end of this year. Given the impossibility of obtaining a sufficient supply of telephone numbers, Sprint has had to postpone its entry indefinitely, *i.e.*, until an adequate supply in fact is made available.

NEXTLINK has experienced similar problems, indicating that "[t]here are currently numerous rate centers that NEXTLINK would like to offer its services in, but cannot solely on the basis of a lack of numbers."[25] Similarly, Choice One Communications has complained that "[t]he lack of numbers in the 508 NPA severely hampers [its] competitiveness in the Worcester market."[26] According to Choice One:

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[25] Comments of NEXTLINK Massachusetts, Inc. at 1-2, *Proceeding by the DTE to Conduct Mandatory Thousands-Block Number Pooling Trials Pursuant to the Authority Delegated by the FCC*, DTE Dkt. No. 99-99 (filed Feb. 3, 2000) ("NEXTLINK Comments") <http://www.state.ma.us/dpu/telecom/99-99/cmntnextlink.htm> (stating that there are numerous rate centers in which NEXTLINK has zero numbers).

[26] Comments of Choice One Communications of Massachusetts, Inc. at 1, *Proceeding by the DTE to Conduct Mandatory Thousands-Block Number Pooling Trials Pursuant to the Authority Delegated by the FCC,* DTE Dkt. No. 99-99 (filed Feb. 3, 2000) ("Choice One Comments") <http://www.state.ma.us/dpu/telecom/99-99/choice.htm>.

> Although Choice One has some assigned NXXs codes in the Worcester market, it does not have NXXs code[s] in each rate center in which it provides service. In those areas in which it has no other NXX codes, it is able to market its service to customers who wish to migrate from another service provider's service because of the availability of local number portability. However, it is unable to offer such customers additional voice services through the use of additional lines or market services to customers establishing new service in certain segments of the Worchester area. Thus, the lack of sufficient NXX codes in the 508 NPA constrains the ability of Choice One to compete with incumbent carriers in this area.

Choice One Comments at 1. MediaOne, despite receiving emergency access to a handful of NXXs in two area codes, also continues to face numbering resource issues:[27]

> [As of July 18, 2000] there are no numbering resources available in the 508 area code and the 617 area code also faces imminent exhaust. In addition, the Department recently noted in a Memorandum, that the priority list for numbers in the 781 NPA extends through January 2001, and code requesters in the month of June will now have to wait until March, 2001 to activate their codes. Similarly, in 978, successful code requesters in the July lottery will be unable to activate numbers until October, 2000.

MediaOne Comments at 13. According to MediaOne, although DTE "has recognized this numbering crisis and has appropriately ordered relief in the form of four new area overlay codes in the near future, this expected relief will not occur swiftly enough to avoid impact on competition in the local exchange market." Id. As a result, "the unavailability of telephone numbers to MediaOne has hampered the roll out of its Digital Telephone Services and delayed its entrance into many local cities and towns, illustrating a clear competitive disadvantage." *Id.*

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[27] The Commission has delegated authority to DTE "to hear and address claims of carriers claiming that they do not, or in the near future will not, have any line numbers remaining in their NXX codes, and will be unable to serve customers if they cannot obtain an NXX code." *Massachusetts Delegation Order* ¶ 38. Nonetheless, Sprint is aware of only two instances (MediaOne and AT&T Wireless) in which DTE has granted an emergency request for additional exchange codes above and beyond those provided for under the rationing procedures.

Verizon in contrast remains largely immune to the numbering crisis. As a prior regional code administrator, Verizon oversaw the assignment of NXX codes and essentially had unrestricted authority to assign itself as many NXX codes as it desired in each rate center. Because the supply of numbers was abundant and demand was slight, Verizon at the time had no incentive to optimize its use of numbering resources. The Commission has confirmed that, due to these legacy numbering configurations, incumbent LECs "have an abundance of available numbers in reserve from the older NXXs."[28] As a result, new entrants in Massachusetts will exclusively bear the brunt of such a shortage.[29] As NEXTLINK has pointed out, "[Verizon] readily admits that it has extra phone numbers in every rate center in Massachusetts. [Verizon] is not turning customers away because of a lack of numbers." NEXTLINK Comments at 2.[30]

The lack of telephone numbers thus poses a fundamental barrier to entry and expansion in Massachusetts. When initially promulgating rules regarding dialing parity and numbering, the

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28 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 17964, ¶ 26 (1999) ("*Third Order on Reconsideration*"). Although the Commission has been careful not to "suggest that incumbent LECs have been unfair or partial in their roles as code administrators," it nonetheless shares "concerns that the disproportionate allocations of NXXs to incumbent LECs -- a logical result of their incumbency -- does give incumbent LECs an advantage over new entrants." *Id.*

29 *See* Comments of Sprint Corporation at 4-5, *Numbering Resource Optimization*, CC Dkt. No. 99-200 (filed July 30, 1999).

30 Both the Massachusetts State Attorney General and DTE itself have recognized the dire implications of the numbering shortage for competition in Massachusetts. *See* Comments of Attorney General at 4, *Proceeding by the DTE to Conduct Mandatory Thousands-Block Number Pooling Trials Pursuant to the Authority Delegated by the FCC*, DTE Dkt. No. 99-99 (filed Feb. 4, 2000) ("Recent developments suggest that telephone carriers are trying to increase competition but are hampered by the lack of available number resources."); *DTE Area Code Order* at 24 (the failure "to provide sufficient numbering resources for telecommunications demand . . . would certainly harm consumers, the telecommunications industry that serves those consumers, and the state's economy as a whole").

Commission acknowledged that an incumbent LEC's access to and control over telephone numbers is one "of the strongest aspects of local exchange carrier incumbency." *Second Report* ¶ 3. Since then, the Commission "has repeatedly recognized that access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network."[31] Indeed, when delegating interim numbering authority to state commissions (including DTE), the Commission cautioned that "*[u]nder no circumstances* should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible."[32]

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31 *Second Report* ¶ 261; *see also id.* ¶ 3 ("numbering administration issues are critical issues for the development of local competition"); *Third Order on Reconsideration* ¶ 4 ("fair and impartial access to numbering resources is critical for entities seeking to provide telecommunications services"); *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588, ¶ 4 (1997) ("[a]dequate telephone numbers . . . are essential to provide consumers efficient access to new telecommunications services and technologies"); *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 FCC Rcd 16802, ¶ 101 (1997) ("access to numbering resources is essential to all entities, not just small businesses, desiring to participate in the telecommunications industry"). Congress has "also recognized that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States." *Second Report* ¶ 261.

32 *Massachusetts Delegation Order* ¶ 9 (emphasis added); *see also id.* ¶ 15 ("Consumers should never be in the position of being unable to exercise their choice of carrier because that carrier does not have access to numbering resources.").

C. The Absence Of Numbers Compels A Finding That Verizon's Entry Is Contrary To The Public Interest Until The Problem Is Resolved.

The number exhaustion problem dictates denial of the Application. While Verizon appears to have satisfied its own obligations under Section 271(c)(2)(B)(ix), the checklist item governing numbers, satisfaction of the competitive checklist alone is an insufficient basis upon which to conclude that a BOC's Section 271 application is in the public interest.[33] Instead, the Commission must also "review the circumstances presented by the application to ensure that *no other relevant factors exist* that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected." *New York Order* ¶ 423; *Texas Order* ¶ 417 (emphasis added). Among other considerations, the Commission will "review the local and long distance markets to ensure that there are not *unusual circumstances* that would make entry contrary to the public interest under the particular circumstances of this application." *Texas Order* ¶ 417 (emphasis added). Although compliance with the competitive checklist is, of course, essential, the Commission has expressly ruled that "compliance with the checklist will not necessarily assure that all barriers to entry to [the] local telecommunications market have been eliminated." *Michigan II Order* ¶ 390.

Without regard to checklist compliance, it is plain that "unusual circumstances" exist in the state such that granting the instant Application would be against the public interest.

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33 *Application by SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Service in Texas*, CC Dkt. No. 00-65, Memorandum Opinion & Order ¶¶ 416-417 (rel. June 30, 2000) (FCC 00-238) ("*Texas Order*"); *New York Order* ¶¶ 422-423; *Application of BellSouth Corp. for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, ¶ 361 (1998); *Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, ¶ 389 (1997) ("*Michigan II Order*"). In fact, "Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion." *Michigan II Order* ¶ 389 & n.1004.

Competitive providers of telecommunications services are currently either largely or completely unable to obtain telephone numbers in many of the more populous regions of the state. As a result, competitive local service providers are precluded from, or at a minimum impaired in, competing for new lines. This problem is particularly acute in the fastest-growing parts of the local market, such as second lines or new services that require new numbers. More generally, a lack of numbers also prevents CLECs from achieving economies of scale necessary to make competitive entry viable. In contrast, Verizon plainly is free of these problems, giving it a tremendous market advantage in offering new services. The effect is to skew the market unambiguously in the incumbent's favor. Moreover, Verizon's artificial advantage would in turn be extended into the interLATA markets if the Application were granted.

As discussed above, this problem will endure at an absolute minimum for several more months (May 2001) when a stopgap measure will just *begin* to be implemented. Long term resolution is wholly uncertain at this time. Because the numbering crisis demonstrates that the Massachusetts local markets are not fully and irreversibly open to competition, the public interest mandates that Verizon be precluded from entering the in-region, interLATA markets.

While it may appear striking that a Section 271 application must be deferred due to circumstances beyond the control of the applicant, Section 271 is fundamentally a statute of consumer welfare and economic efficiency, not Bell Company equity. The section reflects the fundamental judgment by Congress that the BOC should not be allowed to enter the interLATA market until the local markets are open.[34] The issue of fault is immaterial to whether a barrier exists that precludes CLEC entry, as the Commission made clear in one of its earliest orders

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[34] Track B provides the sole exception to this. If in fact entry were closed to the extent that no competitor sought interconnection, then the BOC could enter. This is plainly not the case here.

explicating this section. In its *Michigan II Order*, the Commission explained that its public interest inquiry would necessarily investigate not only a BOC's failure to cooperate but other entry barriers as well. Its illustrative discussion states:

> We would also want to know about state and local laws, or other legal requirements, that may constitute barriers to entry into the local telecommunications market, or that are intended to promote such entry. We would, for example, be interested in knowing whether state or local governments have imposed discriminatory or burdensome franchising fees or other requirements on new entrants. We also want to know if states or municipalities have denied new entrants equal access to poles, ducts, conduits or other rights of way. In addition, we would be interested in whether a state has adopted policies and programs that favor the incumbent, for example, those relating to universal service. *Although we recognize that a BOC may not have the ability to eliminate such discriminatory or onerous regulatory requirements we believe that local competition will not flourish if new entrants are burdened by such requirements.*

Michigan II Order ¶ 396 (emphasis added).

The relevant fact here is that a substantial disparity exists and that CLECs have been unable to obtain sufficient numbers to offer or expand service. As recently as last September, the Commission itself expressed concern that incumbent LECs such as Verizon that had once acted as NXX administrators continue to possess a competitive advantage over new entrants with regard to numbering resources and "that the disproportionate allocation of NXXs between the incumbent LECs and their competitors is a serious problem." *See Third Order on Reconsideration* ¶ 26. The fact that incumbent LECs have multiple, underutilized NXX codes in each rate center, while CLECs cannot get access to numbers, confirms that this legacy advantage continues.

Moreover, while it is beyond Verizon's control to unilaterally solve the numbering crisis, it is nevertheless noteworthy that Verizon has consistently opposed the DTE's investigation into rate center consolidation, including a proposal by the State Attorney General to consolidate into

twenty-five rate centers.[35] But regardless of fault, the barrier to competitive entry remains. Verizon's entry into the long distance market in Massachusetts cannot be in the public interest at this time.

III. VERIZON'S OWN CONDUCT COMPELS A FINDING THAT IT HAS NOT MET THE CHECKLIST AND THAT THE LOCAL MARKETS ARE NOT IRREVERSIBLY OPEN TO COMPETITIVE ENTRY.

In January of this year, Sprint initiated negotiations with Verizon in order to enter into a new interconnection agreement that would replace the current one and more readily provide Sprint with the essential inputs to bring Sprint ION to market. After extensive negotiations and effort, Sprint was nonetheless unable to obtain a voluntary agreement with Verizon and was forced to petition the Massachusetts DTE to arbitrate eighteen distinct sets of issues.[36] While some issues remain matters of genuine dispute -- and Sprint does not here seek FCC intervention in those issues -- it is equally true that Verizon took a number of facially unreasonable positions during its negotiations with Sprint, forcing Sprint to petition the DTE for arbitration on these issues. In some instances, Verizon conceded its obligations during the arbitration process; in other respects, Sprint is being forced to complete the arbitration process (which remains ongoing) before it can achieve an interconnection agreement suitable for bringing Sprint ION to Massachusetts consumers. Forcing Sprint to seek arbitration on these issues -- when Verizon's

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35 *See* Comments of Bell Atlantic-Massachusetts, *Investigation by the Department on its Own Motion to Determine the Need for New Area Codes in Eastern Massachusetts and Whether Measures Could be Implemented to Conserve Exchange Codes Within Eastern Massachusetts*, DTE Dkt. No. 98-38 (filed March 19, 1999); Reply Comments of Bell Atlantic-Massachusetts, *id.* (filed June 23, 2000).

36 *See* Petition for Arbitration of Sprint Communications Company L.P., *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

legal obligations have been unambiguous -- has served only to delay and raise the costs of Sprint's efforts to enter Massachusetts local markets.

Sprint submits these issues to the FCC's record for the purpose of fully exposing Verizon's disregard for its federal and state regulatory obligations. This disregard is highly relevant to the FCC's assessment of whether Verizon is currently providing interconnection in accordance with the checklist on a non-discriminatory basis, whether Verizon can reasonably be expected to continue to fulfill these obligations, and thus whether competition can be expected to continue and grow if 271 authority is granted at this time. In the *New York Order*, the Commission stated that, while isolated instances of unfair or discriminatory conduct by a BOC would not provide the basis for withholding action on a Section 271 application, evidence of a number of incidents might "constitute a pattern of discriminatory conduct that undermines [its] confidence that Bell Atlantic's local market is open to competition and will remain so after Bell Atlantic receives interLATA authority." *New York Order* ¶ 444. It is in this context that Sprint submits its experience with Verizon, one that Sprint believes is hardly unique for CLECs in Massachusetts.

Indeed, far from any sense that Sprint is being selectively and exclusively targeted for discriminatory treatment, Sprint believes that Verizon has failed in its interconnection obligations across a range of CLECs, both with respect to those seeking new interconnection agreements (like Sprint) as well as those already exchanging traffic (where Verizon's provisioning has been documented to be substantially below that required by law). *See generally* DTE Transcript *passim*. The Commission should be alert to evidence submitted into this record of similar CLEC experiences, and assess whether such a pattern is occurring. *See Michigan II Order* ¶ 397 ("Because the success of the market opening provisions of the 1996 Act depend, to

a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority").

A. Verizon Has Taken Facially Unreasonable Positions In The Negotiations Process.

Pick-and-choose. The most blatant example of Verizon's approach to Sprint was its opening position that Sprint is not entitled to pick-and-choose rights under Section 252(i). In accordance with Section 252 (i) of the Act[37] and FCC Rule 51.809,[38] Sprint proposed language that would require Verizon to make available to Sprint, as a requesting telecommunications carrier, without unreasonable delay, any individual interconnection, service, or network element arrangement contained in any agreement to which Verizon is a party that is approved by the DTE, upon the same rates, terms, and conditions as those provided in that other agreement.[39] Verizon insisted, however, on narrowing these rights, proposing that Sprint would have to adopt "all of the rates, terms and conditions" of the other agreement.[40]

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37 47 U.S.C. § 252(i).

38 47 C.F.R. § 51.809. The Supreme Court of course upheld this rule, and had done so prior to the onset of negotiations. *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 396 (1999).

39 Verizon MA-Sprint Draft Interconnection Agreement § 6(c).

40 Verizon also sought to improperly place other conditions on Sprint's right to pick-and-choose, in contravention of the Act, the FCC's Rules and the Supreme Court's decision.

In order to move the process forward, Sprint has been forced to accept contract language that would moot this debate temporarily, by agreeing that Verizon will undertake to fulfill Sprint's rights under 252(i) "as required by law."[41] Sprint is understandably concerned that Verizon will nevertheless balk at some future attempt by Sprint to exercise its 252(i) rights; given Verizon's failure to acknowledge its unambiguous obligations here, the FCC should be equally alarmed.

Compliance with the UNE Remand Order. Another example lies in Verizon's refusal to agree to language proposed by Sprint *that was lifted nearly verbatim from FCC orders* regarding the ILEC's UNE obligations. *See* 47 C.F.R. § 51.319. Consistent with the Commission's *UNE Remand Order*, Sprint sought access to line conditioning, packet switching, call-related databases, subloop, subloop element-inside wire, dark fiber and loop information databases on a non-discriminatory, unfiltered basis. Verizon refused this request and once having forced Sprint to arbitrate, submitted contract language that unduly limited and restricted Sprint's ability to utilize these UNEs.

These inputs are of course essential to the competitive provisioning of advanced broadband services in general and to Sprint ION specifically. Verizon's negotiations stance, moreover, directly reflects its marketplace conduct: the Massachusetts record is replete with the numerous problems associated with Verizon's provisioning of DSL-capable loops, most especially its discriminatory treatment of CLECs seeking access to loop qualification information. *See, e.g.*, DTE Transcript at 5513-20 (E. Ashton Johnston, Digital Broadband)

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41 *See* Second Stipulation at 2, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed Sept. 15, 2000).

(describing *inter alia* inadequacy of Verizon's filtered loop qualification database for CLECs and absence of probative testing by KPMG); *id.* at 5571-76 (Kimberly Scardino, Rhythms Links) (summarizing record evidence of substandard provisioning by Verizon).

Verizon has been particularly obstreperous regarding loop information, arguing that it has no general obligation to provide CLEC access to all loop data in its possession, and further that it has no obligation to provide data to Sprint to the extent Sprint intends to use the information for planning or marketing purposes.[42] While the FCC did not require ILECs to construct a database for the benefit of CLECs, its *UNE Remand Order* plainly mandates non-discriminatory access to all loop qualification information in the possession of the ILEC, including digital loop carrier data. *UNE Remand Order* ¶ 427 ("incumbent LECs must provide requesting carrier the same underlying information that the incumbent has in any of its own databases or other internal records"). It requires Verizon to produce this information on an unfiltered basis. *Id.* ¶ 428 (ILEC "may not filter or digest such information"). It further mandates that Verizon give these data to CLECs not only on a loop-by-loop basis, but also on the basis of the "zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides information to itself." *Id.* ¶ 427. The FCC clarified that, "the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists *anywhere* within the incumbent's back office and can be accessed by any of the incumbent's personnel. Denying competitors access to such information, where the incumbent (or the affiliate, if one exists) is able to obtain the relevant information for

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42 *See* Position Statement of Verizon Massachusetts at 13-18, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed Sept. 8, 2000).

itself, will impede the efficient deployment of advanced services." *Id*. ¶ 430 (emphasis added). Nowhere does the *UNE Remand Order* endorse the view that the ILEC can selectively withhold some information from some CLECs because it does not approve the lawful, competitive use to which the data might be put.

Verizon's efforts to resist its federal obligations, as spelled out in the FCC's own rules and orders, are simply not tolerable. This posturing should be fully accounted for in the Commission's decisionmaking under Section 271, as it is highly probative of the degree of cooperation one can expect going forward.[43]

GRIP and Reciprocal Compensation issues in violation of state law. Another example lies in Verizon's refusal to obey and fulfill its unambiguous state regulatory obligations. As the Commission is fully aware, the state of the law governing reciprocal compensation for ISP-bound traffic is uncertain and evolving. Verizon has exploited this uncertainty, along with

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[43] As discussed above, Sprint offers this evidence primarily for the purpose of its probative value in predicting Verizon's likely misconduct if interLATA authority is granted prematurely. In addition, Sprint respectfully notes that the Commission is free, under traditional exhaustion doctrine, to rule directly on any of these issues on the merits. *See, e.g., McKart v. United States*, 395 U.S. 185, 197-98 (1969) (exhaustion of administrative remedies unnecessary where question is one of statutory interpretation); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952 (6th Cir. 1971) (administrative remedies need not be exhausted where review does "not necessitate the development of facts by the Commission, but rather presents a simple legal issue"). While plainly the 1996 Act contemplates an arbitration process for the resolution of factual issues regarding interconnection, the courts have ruled that the state public service commissions are not entitled to deference on matters of interpretation of the Act but instead are subject to *de novo* review. *See, e.g., GTE So. Inc. v. Morrison*, 199 F.3d 733, 745 (4th Cir. 1999); *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 40 F.Supp 2d. 416, 422 n.5 (E.D.Ky. 1999) (noting that it has been established by "every court that has addressed this issue" that *de novo* review is the correct standard). The Commission, in contrast, is entitled to *Chevron* deference in interpreting the Act. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). Given this, the Commission need not await the full completion of the arbitration process before articulating the scope of Verizon's legal obligations, especially here where all the Commission would be doing is confirming its prior legal rulings.

Sprint's need for an interconnection agreement, to attempt to gain unreasonable advantage. In the arbitration, Sprint has offered two options to resolve compensation for ISP-bound traffic. Its initial proposal has been the use of a new rate structure to account for the different costs of carrying this traffic for ILECs.[44] In the alternative, however, Sprint has offered simply to follow unambiguous Massachusetts DTE rulings on this matter.[45] Verizon has not merely refused to accept its state obligations; it has exploited this opportunity and insisted upon two legal positions that flatly contradict federal and/or Massachusetts law. First, it has refused to agree to pay Sprint any compensation for ISP-bound traffic unless Sprint agrees to GRIP -- geographically relevant interconnection points, *notwithstanding the fact that the DTE has clearly declared GRIP to be illegal and inconsistent with the Telecommunications Act of 1996 and FCC orders interpreting the Act.* The Department has ordered that CLECs may decide where to interconnect with the LEC and has expressly rejected Verizon's GRIP proposal:

> Because Bell Atlantic's GRIP proposal would require CLECs to establish additional interconnection points at Bell Atlantic's tandem and end offices and does not allocate transport costs in a competitively neutral manner, we reject it. We direct Bell Atlantic to revise its tariff to eliminate the GRIP proposal and to include a provision that reflects that each carrier has an obligation to transport its own customers' calls to the destination end-user on another carrier's network or bear the cost of such transport.[46]

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44 Sprint proposes the use of a bifurcated rate structure for reciprocal compensation. This proposed rate structure recognizes that the costs associated with initial call set-up should be recovered in the first minute of the call. The effect of this rate structure is to decrease the average per minute reciprocal compensation rate as a carrier's call holding time increases.

45 *MCI WorldCom v. Bell Atlantic*, DTE Dkt. No. 97-116-C, Order (May 19, 1999).

46 *Investigation by the Department on its Motion as to the Propriety of Rates and Charges Set Forth in the Following Tariffs: MDTE Nos. 14 and 17, filed with the Department by Verizon on August 27, 1999, to Become Effective on September 27, 1999*, DTE Dkt. No.

The Department also ruled that Verizon's GRIP proposal is inconsistent with the FCC's rationale concerning cost recovery, and that it could give Verizon a competitive advantage over CLECs by assigning all additional transport costs to CLECs. *DTE GRIP Order* at 145. Notwithstanding the Department's rejection of GRIP, and notwithstanding the DTE's earlier rejection of efforts by Verizon to impose GRIP through the interconnection agreement process,[47] Verizon nevertheless has included proposed contract language in its response to Sprint's arbitration petition that would force Sprint to put interconnection points in multiple locations throughout a LATA.[48] It is simply not clear how many times Verizon must lose this issue before it will comply with the rule of law.

Similarly, Verizon has tried to use the arbitration process to try to bind Sprint to its own legal position that ISP-bound traffic is not local traffic. But as the FCC is fully aware, the issue of whether internet traffic is local is unsettled and currently pending at the FCC. *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (vacating and remanding to the FCC its ruling that ISP-bound traffic is not local). Any debate over the issue of the appropriate characterization of internet traffic in an interconnection agreement is meaningless and serves only to delay local interconnection and competition.

98-57, Final Order at 146 (March 24, 2000) <http://www.state.ma.us/dpu/telecom/98-57/finalorder.htm> ("*DTE GRIP Order*").

47 *Petitions of MediaOne Telecommunications of Massachusetts, Inc. and Bell Atlantic-Massachusetts for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement*, DTE Dkt. No. 99-42/43, Final Order at 41-43 (Aug. 25, 1999) <http:www.state.ma.us/dpu/telecom/99-42/final_order.htm>.

48 *See, e.g.*, Verizon MA-Sprint Draft Interconnection Agreement Part V § 1.2.3; *see also id.*, Part V § 1.2.4 (stating in pertinent part that "A 'geographically relevant' IP [Interconnection Point] shall mean an IP that is located within the BA [Verizon] local calling area [ ] but no greater than twenty five (25) miles from the BA Rate Center . . .").

Verizon has also refused to apply reciprocal compensation to local calls over existing access trunk facilities. Instead, Verizon requires Sprint to pay higher access charges without regard to traffic type, thereby directly increasing Sprint's costs and preventing Sprint from taking advantage of network efficiencies. This issue is also pending in the Sprint/Verizon Massachusetts arbitration proceeding.

Local traffic definition that is inconsistent with the Commission's Rules. Verizon's proposed contract definition of local traffic as "traffic that originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network within a given local calling area or expanded area service ("EAS") area" flies in the face of the Commission's rules, which define local traffic based upon the origination and termination of the call. *See* 47 C.F.R. § 51.701(b)(1). There is simply no legal requirement that local traffic must traverse both parties' networks.

B. Verizon's Arbitration Positions Make Plain That In The Future It Will Alter At Least Some Of The Conditions That Have Made Some Entry Possible In Massachusetts.

UNE Combinations. Verizon's purported demonstration of competitive entry sufficient to satisfy Section 271 rests significantly upon the presence of considerable numbers of CLECs serving customers through preassembled UNE combinations. *See* Verizon Brief at 33-34; Lacoutoure/Ruesterholz Decl. ¶¶ 180-185. Verizon explains that "[t]he demand for platforms in particular is growing rapidly: Verizon's platform volumes through the end of July alone represent a 12-fold increase over the end of 1999. And the number likely will balloon further just as it did in New York . . ." Verizon Brief at 17. This requested extrapolation is completely unsupportable, however, in light of the Eighth Circuit's ruling in July 2000 vacating the unbundling rules and Verizon's own expressed intent to exploit this decision.

On a going forward basis, it seems dubious whether UNE combinations will in fact remain a fully available option to Massachusetts CLECs. Specifically, Verizon has suggested that it might reserve the availability of combined elements to only those instances where a CLEC serves migrating customers that already have the precise combination on a preassembled basis. As understood and explained by the DTE, Verizon's position in January 2000 was:

> that it will voluntarily provide that combination even where the loop and local switching elements comprising the UNE-P do not already exist in combined form for a specific customer in its network . . . that it will offer this combination throughout Massachusetts under the same terms for existing loop and local switching combinations, subject to limitations discussed below . . . that this offer addresses the principal type of combination that CLEC parties in this case have sought and satisfies fully any Department concerns about a differentiation between existing and new UNE-P arrangements . . . *and that it reserves the right to review this voluntary commitment based on judicial action by the Eighth Circuit Court of Appeals concerning FCC Rules 51.315(c)-(f).*[49]

Verizon is of course free to exploit the standing decision of the Eighth Circuit,[50] but Verizon cannot simultaneously ask the Commission to find that competition will flourish as it withdraws the very entry conditions that make that opportunity possible. Verizon's posture on

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49 *Consolidated Petitions for Arbitration of Interconnection Agreements*, DTE/DPU Dkt. Nos. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4-P Order at 6 (Jan. 10, 2000) <http://www.state.ma.us/dpu/telecom/96-73/UneProvi.htm> (emphasis added).

50 Verizon apparently intends to do so. In its arbitration with Sprint, Verizon labeled Sprint's interpretation of "currently combined" as used in FCC Rule 51.315(b) as "erroneous." Verizon Response to Sprint Petition for Arbitration at 13-14, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed July 11, 2000). Sprint's "erroneous" reading merely recited the FCC's First Report and Order in the Local Competition Docket. *See* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 296 (1996). Having compromised on language referencing applicable law, it would appear that Verizon intends to withdraw this means of entry from Sprint and other CLECs going forward.

this issue in all likelihood means that CLECs will no longer be able to obtain UNEs combined by Verizon in any instance where the customer is not already receiving service through exactly those combined elements. This would materially disadvantage CLECs in the competition for new customers. With CLECs' growth substantially limited in this way, no extrapolation of the sort argued by Verizon is justified or reasonable. In turn, the FCC cannot reasonably make comfortable predictions of competitive growth in this area given Verizon's explicit refusal to sustain CLECs' access to customarily combined UNE combinations.

Capping Competitors' Rates. Verizon has also sought to impose additional obstacles and costs to competition that the New York regulators refused to tolerate. For example, Verizon has taken the position in its arbitration that Sprint should not be allowed to charge Verizon a rate higher than the rates charged by Verizon for the same services. With the possible exception of some reciprocal compensation rates, nothing in the Act or in Massachusetts state law provides for arbitrarily capping Sprint's rates at Verizon's rates for the same services. Verizon lost this very issue in New York, where the New York Public Service Commission rejected Bell Atlantic-New York's similar attempts to tie Sprint's prices to its own tariff because Sprint maintains acceptable tariffs on file with the PSC.[51] Verizon has sought to relitigate this issue in Massachusetts.

Verizon's position, if accepted, would enable Verizon to control Sprint's rates. Verizon could automatically lower Sprint's rates by simply lowering Verizon's rates and disrupt efficient, cost-based pricing by Sprint. Further, Verizon's rate cap proposal, if successful, could expand

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51 *Petition of Sprint Communications Company L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Bell Atlantic-New York*, Case 99-C-1389, Order Denying Rehearing and Clarifying Order Resolving Arbitration Issues at 10 (NYPSC May 26, 2000) ("*NYPSC Arbitration Order*").

beyond these two companies and very conceivably apply to local pricing for the entire telecommunications industry in Massachusetts, tying the rates of all competitors to Verizon's rates.[52] This threat to competitive pricing was appropriately rejected in New York. *See NYPSC Arbitration Order* at 9-10.

Verizon is generally not bound in Massachusetts for issues litigated in New York. But it certainly should not be heard to rely on favorable competitive conditions in New York when it seeks at the same time to materially detract from those conditions by imposing additional costs on competitors. By refusing to provide certain inputs in Massachusetts that it had provided in New York,[53] and by imposing new costs on entrants in contradistinction to New York, Verizon has precluded any reliance on New York in favor of its Application here.

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52 Verizon has available at least two alternatives that do not disrupt the competitive process. It can protest Sprint's tariffs, or Verizon can file a complaint in the event it believes the rates to be unreasonable. Moreover, the DTE could suspend and investigate Sprint's or any other CLEC's proposed tariffed rates if they were unreasonable.

53 Verizon refused Sprint's request to use the Sprint/Verizon-New York agreement in Massachusetts and other states (subject of course to any necessary changes to conform the contract to other states' applicable law). This has required Sprint to file for arbitration against Verizon in other states, including Massachusetts and New Jersey, rather than adapt the New York agreement to other states (which would have avoided unnecessary litigation and delays).

CONCLUSION

For the foregoing reasons, Verizon's Application must be denied.

Respectfully submitted,

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ITS ATTORNEYS

Dated: October 16, 2000

ATTACHMENT 1

Chart of Twenty Largest Municipalities in Massachusetts

MUNICIPALITY	ESTIMATE 7/2/98	AREA CODE	% MA TOTAL POPULATION
1. BOSTON	555,447	617	9.06%
2. WORCESTER	166,535	508	2.71%
3. SPRINGFIELD	148,144	413	2.41%
4. LOWELL	101,075	978	1.64%
5. NEW BEDFORD	96,353	508	1.57%
6. CAMBRIDGE	93,352	617	1.52%
7. BROCKTON	93,173	508	1.52%
8. FALL RIVER	90,654	508	1.48%
9. QUINCY	85,752	617	1.40%
10. LYNN	81,075	781	1.32%
11. NEWTON	80,345	617	1.31%
12. SOMERVILLE	74,100	617	1.21%
13. LAWRENCE	69,420	978	1.13%
14. FRAMINGHAM	64,646	508	1.05%
15. WALTHAM	58,540	781	0.95%
16. MEDFORD	55,981	781	0.91%
17. HAVERHILL	55,321	978	0.90%
18. WEYMOUTH	54,903	781	0.89%
19. CHICOPEE	54,049	413	0.88%
20. BROOKLINE	53,911	617	0.88%

Sources: Massachusetts Department of Revenue, Division of Local Services, Municipal Data Bank, file name 7098.xls (U.S. census data, estimated as of July 2, 1998); <http://www.state.ma.us/dls/mdmstuf/Pop7098.xls>; Verizon Area Codes for eastern Massachusetts <http://www.bellatlantic.com/areacode/pages/508.htm>; <http://www.bellatlantic.com/areacode/pages/617.htm>; <http://www.bellatlantic.com/areacode/pages/781.htm>; <http://www.bellatlantic.com/areacode/pages/978.htm>.